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JUN 03 2003

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEFENDERS OF WILDLIFE
1130 17th Street, N.W.
Washington, D.C. 20036-4604,

FRIENDS OF THE EARTH
1025 Vermont Avenue, N.W., 3rd Floor
Washington, D.C. 20005,

ENDANGERED SPECIES COALITION
1101 14th Street, N.W.
Washington, D.C. 20005

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF THE INTERIOR
1849 C Street, N.W.
Washington, D.C. 20240

UNITED STATES OFFICE
OF GOVERNMENT ETHICS
1201 New York Avenue, N.W., Suite 500
Washington, D.C. 20005,

Defendants

Case No.
CASE NUMBER 1:03CV01192

JUDGE: Ellen Segal Huvelle

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 06/03/2003

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

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INTRODUCTION

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, as well as agency FOIA regulations, challenging the failure of the United States Department of the Interior ("DOI") and the United States Office of Government Ethics ("OGE") to fulfill the request of Plaintiffs for records related to the professional conduct and actions of senior officials at DOI including, but not limited to, serious questions regarding compliance with federal ethics and conflict of interest laws.

2. This case seeks declaratory relief that Defendants are in violation of the FOIA for failing to fulfill Plaintiffs' request for records, and injunctive relief that Defendants immediately and fully comply with Plaintiffs' requests under the FOIA.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

4. Plaintiff Defenders of Wildlife ("Defenders") is a nonprofit corporation with approximately one million members and supporters. Defenders is dedicated to preserving wildlife and their habitat, and emphasizing appreciation and protection for all species in their ecological role within the environment. Through education, outreach, advocacy, and other efforts, Defenders works to preserve wildlife species and the ecosystems upon which they depend. Defenders is a key source of conservation and related biodiversity information for its staff, its members and the general public.

5. Defenders has invested considerable organizational resources to help conserve and protect the public lands and resources administered by the DOI. Defenders closely monitors the laws, regulations, and policies under which these lands are managed, particularly as they relate to wildlife and biodiversity protection. For example, Defenders has closely monitored and participated in DOI oil, gas and other mineral actions in order to ensure the conservation of the grizzly bear, lynx, wolf, migratory birds, various fish species, and other wildlife populations, some of which are endangered with extinction.

6. Defenders and its members are harmed by the DOI's and OGE's failure to comply with the FOIA because that failure harms Defenders' ability to provide full, accurate, and current information to its members regarding the management of DOI-administered lands, as well as the professional integrity of DOI officials who administer those lands. Defenders brings this action on its own institutional behalf and also on behalf of its members. Defenders has exhausted the applicable administrative remedies with regard to each Defendant. 5 U.S.C. § 552(a)(6)(C).

7. Plaintiff Friends of the Earth ("FOE") is an environmental advocacy organization founded in 1969 and incorporated in the District of Columbia. FoE has approximately 20,000 members across the nation who live, work, and recreate on Department of the Interior lands. The mission of FoE is to protect the planet from environmental degradation; to preserve biological, cultural and ethnic diversity; and to empower citizens to improve the quality of their environment and their lives. One of FoE's programs is its Interior Watchdog Program, which monitors actions by the DOI, tracks ethics agreements and conflicts of interest by DOI political staff, fights environmental rollbacks by DOI and Congress, and exposes bad actions or policies by DOI or its staff. Through its DOI work, FoE has filed a number of FOIA requests seeking the

ethics agreements and official calendars of a number of DOI political appointees. FoE has used the information received in its FOIA requests to expose existing and/or potential conflicts of interests and ethics violations by key senior staff at DOI.

8. FoE also has a long-standing record of action on energy issues, with a particular interest in fossil fuels, ranging from FoE's efforts to cut subsidies for coal mining, to its leadership on the passage of the Surface Mining Control and Reclamation Act. FoE was also the founder of the "green scissors coalition," which for a decade has worked to cut federal subsidies and tax breaks for polluting energy industries. In addition to its Interior Watchdog Program, FoE conducts other public integrity programs, such as its "international right to know program," which seeks to curb environmental, labor, and human rights abuses by requiring U.S. companies operating abroad to adhere to the same information-disclosure requirements as companies operating in the U.S. DOI's and OGE's failure to comply with the FOIA harms FoE's and its members' ability to advocate for its interests regarding DOI-administered lands. FoE brings this action on its own institutional behalf and also on behalf of its members. FoE has exhausted the applicable administrative remedies with regard to each Defendant. 5 U.S.C. § 552(a)(6)(C).

9. Plaintiff Endangered Species Coalition ("ESC"), a non-profit corporation based in Washington, D.C., is an organization of organizations that works on endangered species (and related) issues for over 440 environmental, religious, scientific, community/citizen, humane, and business groups around the United States. The ESC uses extensive grassroots networking, education, collaboration, discussions with lawmakers, and the dissemination of information to ensure that all threatened and endangered species can be passed on safely into the future. DOI's and OGE's failure to comply with the FOIA harms ESC's and its members' ability to gain information on important agency actions affecting endangered wildlife, and prevents the ESC

from lawfully disseminating that information to its members and constituents. ESC brings this action on its own institutional behalf. ESC has exhausted the applicable administrative remedies with regard to each Defendant. 5 U.S.C. § 552(a)(6)(C).

10. Defendant United States Department of the Interior ("DOI") is a Department of the Executive Branch of the United States Government. The DOI is an agency within the meaning of 5 U.S.C. § 552(f). The DOI is a federal agency with possession and control of the requested records, and is responsible for fulfilling Plaintiffs' FOIA request. The DOI is not only responsible for managing over 500 million acres of public lands, but is also the nation's principal federal wildlife conservation agency.

11. Defendant United States Office of Government Ethics is an agency within the Executive Branch of the United States Government. The OGE is an agency within the meaning of 5 U.S.C. § 552(f). The OGE is a federal agency with possession and control of the requested records, and is responsible for fulfilling Plaintiffs' FOIA request. The OGE provides guidance to Executive Branch agencies to prevent conflicts of interest on the part of Government employees, and to resolve those conflicts of interest that do occur. The OGE is responsible for fostering high ethical standards for federal employees, in order to strengthen the public's confidence that the Government's business is conducted with impartiality and integrity.

STATUTORY FRAMEWORK

The Freedom of Information Act

12. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

13. The DOI issued revised regulations implementing the FOIA, effective November 20, 2002. U.S. Department of the Interior, Revision of the Freedom of Information Act

Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996, 67 Fed. Reg. 64527-52 (October 21, 2002) (to be codified at 43 C.F.R. Part 2). The DOI cites the new and old regulations interchangeably in response to Plaintiffs' FOIA requests and appeals.

14. The OGE has issued regulations implementing the FOIA. 5 C.F.R. Part 2604.

15. An agency must respond to a party making a FOIA request within twenty working days, notifying that party of at least its determination whether or not to fulfill the request, and of the requester's right to appeal its determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i). See also, 67 Fed. Reg. at 64534-35; 5 C.F.R. § 2604.305(a)(1).

16. An agency must respond to a FOIA appeal within twenty working days, notifying that party of its determination to either release the withheld records or uphold the denial. 5 U.S.C. § 552(a)(6)(A)(ii). See also, 67 Fed. Reg. at 64541; 5 C.F.R. § 2604.305(b).

17. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and provide "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

18. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

19. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the Court makes a written finding that "the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously," a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

FACTS GIVING RISE TO PLAINTIFFS' CLAIMS FOR RELIEF

The Department of the Interior's Holdings

20. The DOI is trustee for approximately 507 million acres of surface land, or about one-fifth of the land in the United States, including National Parks, Wildlife Refuges, and public lands managed by the Bureau of Land Management ("BLM"), an agency of the DOI. These lands are owned by all Americans. The DOI manages approximately 300 million additional acres of subsurface mineral resources as trustee for all Americans.

21. DOI-administered lands harbor much of the nation's wildlife and biological diversity. They are home to numerous species of birds, mammals, reptiles, fish, and amphibians, including many federally endangered and threatened species, and also encompass a broad array of ecosystems and habitat types.

Oil and Gas Development on DOI Lands

22. The oil and gas industry, along with U.S. government officials, increasingly views federal lands administered by the DOI as a key source of energy in the form of oil, coal, natural gas, and other forms.

23. Public lands being targeted by the U.S. government for oil and gas production support a diversity of wildlife, including 737 rare and vulnerable species, 75 of which are listed as threatened or endangered under the ESA. Many of these public lands are linked together, protecting some of the nation's few remaining intact ecosystems and providing contiguous habitat for wide-ranging species such as threatened wolves, threatened grizzly bears, elk, pronghorn, prairie dogs, threatened lynx, and many migratory birds.

24. Coal bed methane (CBM) mining is the extraction of natural gas trapped in subsurface coal deposits. The process of CBM requires pumping out significant amounts of

underground water, which in turn allows the natural gas to escape and be captured by pipelines. The water is then often dumped onto the land, where it flows into streams or into evaporation ponds. Dumping water onto land often causes erosion and, because of its high salinity and potential toxicity, contamination of streams. In addition, CBM causes damage to the landscape because it requires an extensive network of roads, miles of pipelines and containment pits. Thus, CBM can harm wildlife and the habitat it needs in order to survive.

25. The BLM, an agency under DOI, is currently studying proposals for at least 70,000 CBM wells to be drilled in the Powder River Basin in northeastern Wyoming and southeastern Montana by 2010, making it the largest natural gas project ever considered by the agency. The BLM is also actively considering CBM wells in the Green River Basin in southwestern Wyoming, as well as in Colorado, New Mexico, and perhaps other States.

The Deputy Secretary of the Interior

26. J. Steven Griles was nominated to serve as Deputy Secretary of the Interior on April 30, 2001, and was confirmed by the Senate on July 12, 2001. As the DOI's Number 2 official, Mr. Griles is responsible for managing Federal land and mineral holdings and has decision-making authority over matters with wide-ranging environmental effects, as well as financial consequences for the oil and gas industry.

27. Before his appointment to his current position, Mr. Griles held the positions of "Manager," "Vice President," and "Principal" of J. Steven Griles and Associates and also held the positions of "President" and "Principal" for both National Environmental Strategies (NES) and NES, Inc.

28. J. Steven Griles and Associates, National Environmental Strategies, and NES, Inc., are energy lobbying firms. As a lobbyist with those firms, Mr. Griles represented a number

of clients that are presently seeking to benefit from oil and gas exploration on DOI-managed lands, including the Powder River Basin. Mr. Griles also represented the Coalbed Methane Ad Hoc Committee, an industry consortium.

29. Before his U.S. Senate confirmation hearings, questions were raised that Mr. Griles's extensive lobbying ties might create a potential financial conflict of interest for him.

30. In response, Mr. Griles sent a letter dated April 24, 2001, to Wendell Sutton, DOI Deputy Assistant Secretary for Human Resources. In an April 30, 2001 letter, Mr. Sutton referred to Mr. Griles's April 24 letter as an "ethics agreement . . . outlining the actions he will take upon confirmation to eliminate any real or apparent conflicts of interest."

Deputy Secretary Griles's Financial Agreement(s) with Previous Employers

31. In his April 24, 2001, letter, Mr. Griles stated he had "executed an agreement with National" whereby he would resign his position and sell his interest in that firm for "book value." Under the agreement(s), Mr. Griles is to receive payments of \$284,000 every year for a period of four years. Mr. Griles acknowledged in his April 24, 2001 letter that this disposal arrangement constituted a continuing financial interest for him.

32. Mr. Griles also stated that he would sell his interest in J. Steven Griles and Associates "for book value" to National Environmental Strategies and that he would sell his interest in NES, Inc "for book value" back to NES, Inc.

33. Mr. Griles paraphrased these financial agreements on the Public Financial Disclosure Report (Form SF-278), dated April 24, 2001, which he is required to file pursuant to the Ethics in Government Act, 5 U.S.C. app. §§ 101 et seq. (EIGA).

34. Mr. Griles continues to receive installment payments on his (at least) \$ 1.1 million arrangement with his former firms.

35. Mr. Griles himself had, and should still possess, a copy of the agreement(s) with his former employers as he was one of the parties to such agreement(s).

Deputy Secretary Griles's Recusals

36. In his April 24, 2001 letter, Mr. Griles agreed to recuse himself, for the duration of his continuing financial interest, "from participating personally and substantially as a Federal employee in any particular matter which would have a direct and predictable effect on National's ability or willingness to make the agreement payments."

37. Mr. Griles also agreed to recuse himself, for the duration of his continuing financial interest, "from acting in any particular matter involving specific parties in which National Environmental Strategies, is, or represents a party."

38. In addition to a variety of other recusals he signed, Mr. Griles also agreed to recuse himself in the April 24, 2001 letter, for two years after the final payment is received, from participating "in any particular matter involving specific parties in which National is or represents a party," unless he receives a written waiver pursuant to 5 C.F.R. § 2635.503(c). On August 1, 2001, Mr. Griles signed three "Statements of Disqualification" repeating all of the recusal statements that he made in his April, 24, 2001 letter.

39. Within weeks of his appointment, Mr. Griles began meeting frequently with former clients—as well as with other Administration officials—on matters affecting former clients. See, e.g., Eric Pianin, "Official's Lobbying Ties Decried," The Washington Post, September 25, 2002, at A1. Mr. Griles also continued to meet with Mr. Marc Himmelstein, a co-founder of, and now head of, National Environmental Strategies. Id. In April 2002, when the Environmental Protection Agency (EPA) assigned its worst ranking to a draft environmental impact statement (EIS) for 51,000 CBM wells in the Powder River Basin, Mr. Griles telephoned

and wrote to EPA officials and attempted to discourage them from issuing a letter indicating that the draft EIS was deficient. The DOI also extended the comment deadline on the EIS. Several of Mr. Griles's former clients—and current clients of National Environmental Strategies and NES, Inc.—stood to gain from Mr. Griles's actions, including the Coalbed Methane Ad Hoc Committee, Western Gas Resources, Devon Energy, and Redstone Gas Partners. On May 8, 2002, after the DOI Office of the Solicitor advised Mr. Griles in writing that he should refrain from participating in decisions regarding the EISs, Mr. Griles signed another Statement of Disqualification (despite having already signed recusals that clearly prohibited his involvement in the CBM issue) to recuse himself “from participating in any activities related to the above described [Environmental Impact] Statements.”

40. Federal law generally prohibits financial conflicts of interest by Federal employees and provides for criminal and civil penalties for violations. Federal law prohibits federal employees from supplementing their salary from a non-government source. DOI employees' conduct is also governed by regulations for standards of ethical conduct for executive branch employees issued by OGE, as well as regulations regarding standards of conduct issued by the U.S. Office of Personnel Management (OPM), and by the DOI itself. Federal regulations prohibit employees from using their office for private gain, or from engaging in criminal, dishonest, or immoral conduct, or other conduct prejudicial to the Government. An employee's violation of OPM regulations regarding standards of conduct may be cause for disciplinary action by the employee's agency, in addition to any penalty prescribed by law. In order to rationally review Mr. Griles's Public Financial Disclosure Report so as to make the determination required by the EIGA as to whether or not Mr. Griles is in compliance with ethics laws and regulations, the DOI and/or OGE designated ethics official must have obtained a copy

of Mr. Griles's financial agreement(s) with his former firms. See, e.g., 5 U.S.C. app. §§ 102(a)(1), (a)(7), 402.

Plaintiffs' FOIA Request and Follow-Up

41. By letter dated September 25, 2002, Plaintiffs requested records related to the financial interests of, inter alia, Mr. J. Steven Griles:

1. all financial disclosure reports, including Forms SF 278, filed by J. Steven Griles pursuant to the Ethics in Government Act of 1978, as amended;
2. any documents relating to the financial interests of Mr. Griles, including, but not limited to retirement, pension, or investment plans with non-U.S. government entities.
3. any documents relating to ethics agreements (whether oral or written) with J. Steven Griles. This request includes agreements described in 5 U.S.C. App. § 110 and 5 C.F.R. § 2634.802 and specifically includes any recusal, divestiture, or resignation agreements themselves, including a correspondence from J. Steven Griles to Wendell Sutton, DOI Human Resources Office, during 2001, in which Mr. Griles agreed to recuse himself regarding matters concerning J. Steven Griles and Associates, National Environmental Strategies, or NES, Inc.;
4. all documents relating to contracts, agreements, or communications, including the contracts and agreements themselves, between Mr. Griles and:
 - a) his former and/or current clients;

b) J. Steven Griles and Associates;

c) National Environmental Strategies; and/or

d) NES, Inc.;

5. any documents regarding Mr. Griles generated pursuant to 5 C.F.R.

Parts 2634, 2635, or 2640, including, but not limited to:

a) written disqualification statements;

b) requests for, and authorizations granting, waivers regarding personal and business relationships of Federal employees; and

c) any disclosures and any determinations made pursuant to 18 U.S.C. § 208 or 5 C.F.R. § 2635.

42. Plaintiffs received a letter dated October 25, 2002, from Defendant DOI stating that it was taking a 10-working-day time extension to process Plaintiffs' request.

43. By letter dated December 6, 2002, Defendant stated that Plaintiffs would be "contacted with regard to the final processing of your FOIA within the next week." On January 21, 2003, Plaintiffs received a letter from DOI (dated January 8, 2003) purporting to enclose "material responsive to your request." Enclosed with the letter were 26 records, comprising 32 pages.

44. The January 2003 letter stated that the DOI was withholding 352 pages of records because of claimed exemptions under the FOIA. The only description provided of withheld records consisted of a one-and-a-half-page list grouping the withheld records into categories such as "70 pages of questions/responses regarding J. Seven Griles' financial holdings used to review and certify the original entry on duty SF-278 and current year SF-278"; "55 pages of drafts of internal memoranda regarding issues raised by the Washington Post article of May 25,

2002"; and "84 pages of drafts of response letter to the Office of Government Ethics, plus 4 pages of final letter." The DOI did not provide an itemized list of records withheld. Of the two records that were released with material redacted, neither indicated any justification for the use of the claimed FOIA exemption.

45. DOI also referred one record, which it described as "a letter, consisting of three pages," to OGE for a release decision. DOI also withheld in full a final DOI letter in response to this OGE letter, claiming deliberative process.

46. The DOI's January 8, 2003 letter failed to provide adequate justification to determine the legitimacy of the use of claimed exemptions.

47. The DOI also failed to release, or even state why it was withholding, several records that the DOI should possess and that are responsive to Plaintiffs' request, including records that are referred to in the 26 documents that the DOI released.

48. The DOI also failed to respond to key portions of Plaintiffs' request, particularly Plaintiffs' request for "contracts, agreements, or communications, including the contracts and agreements themselves, between Mr. Griles and a) his former and/or current clients; b) J. Steven Griles and Associates; c) National Environmental Strategies; and/or d) NES, Inc." At least one such agreement is known to exist because it is referred to in Mr. Griles' April 24 Letter and in the Public Financial Disclosure Report (Form SF-278) that he filed on April 24, 2001.

49. Defenders legal staff spoke with Ms. Sue Ellen Sloca, the DOI FOIA officer, several times during the FOIA process and made clear to her that Plaintiffs were seeking Mr. Griles's agreement or agreements with his former firms. On January 6, 2003, the DOI FOIA officer left a voice mail for a Defenders attorney stating that "I specifically inquired [of the DOI Ethics Office] about documents responsive to item 4 of your request, because as you told me,

you wanted any documents responsive to that . . . today. I asked of the Ethics Office about that request specifically . . . I was told that there was nothing that they found that was releasable in response to that request. . . . There were one or two short excerpts that were draft language from something that might have been applicable, but as such they were subject to the exemption 5 withholding, so that they are not being released.”

50. On February 4, 2003, Plaintiffs filed with the DOI a timely appeal of the DOI’s adverse determinations.

51. In its dated letter of March 3, 2003, DOI stated that Plaintiffs’ appeal, “as it pertains to the withheld documents, is with the Office of the Solicitor for legal review” and that it could not presently respond for that portion of the appeal. The DOI did not “set[] forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched,” as required by the FOIA. 5 U.S.C. § 552(a)(6)(B)(i).

52. The DOI’s March 2003 letter denied all other parts of Plaintiffs’ appeal.

53. The statutory time limit for a response to Plaintiffs’ appeal has run out with regard to DOI, and Plaintiffs have exhausted the applicable administrative remedies. 5 U.S.C. § 552(a)(6)(C).

54. By its letter dated February 11, 2003, OGE notified Plaintiffs that it was refusing to release its three-page letter that DOI had referred to it for a release decision.

55. On March 11, 2003, Plaintiffs filed with OGE a timely appeal of OGE’s adverse determination. Plaintiffs also re-submitted their September 2002 request to OGE requesting the same records that Plaintiffs had requested of DOI in Plaintiffs’ September 25, 2002 request, which had already been forwarded to OGE by DOI.

56. By its letter of April 14, 2003, OGE denied Plaintiffs’ appeal.

57. To date, Plaintiffs have not received a response from OGE to their March 11, 2003 FOIA request. The statutory time limit for a response to Plaintiffs' FOIA request has run out with regard to OGE, and Plaintiffs have exhausted the applicable administrative remedies. 5 U.S.C. § 552(a)(6)(C).

PLAINTIFFS' CLAIMS FOR RELIEF

CLAIM ONE

(Failure to Produce Records)

58. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

59. Plaintiffs properly asked for, and referenced with attachments, the agreement or agreements between Mr. Griles and his former firms.

60. In their formal written responses, not once did Defendants even acknowledge that the agreement or agreements exist, despite clear evidence to the contrary.

61. Plaintiffs are entitled by law to access to the records requested under the FOIA, unless Defendants make an explicit and justified statutory exemption claim.

62. Therefore, Defendants have violated FOIA's mandate to release agency records to the public by failing to acknowledge or release the agreement(s) between Mr. Griles and his former firms that Plaintiffs specifically requested. 5 U.S.C. §§ 552(a)(3), 552(a)(4)(B), 552(d).

CLAIM TWO

(Unauthorized Withholdings)

63. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

64. In their January 8, 2003 denial letter, DOI stated that it was withholding "in full" its four-page "final letter" to the OGE on the grounds of the FOIA's deliberative process exemption, 5 U.S.C. § 552(b)(5). DOI has failed to explain how this record, which DOI admits

is a "final" letter, is part of the pre-decisional process that qualifies a record for a FOIA exemption.

65. In its February 11, 2003 letter, the OGE stated that it was withholding a related "three-page OGE letter" that is responsive to Plaintiffs' request. OGE has also failed to explain how this final letter, which it sent to another agency, is part of the pre-decisional process.

66. In its January 8, 2003 denial letter, DOI stated that it was withholding a total of 109 pages of questions/responses regarding the financial holdings of three DOI employees, including Mr. Griles. Again, Defendants invoked the FOIA's deliberative process exemption, 5 U.S.C. § 552(b)(5), without explaining the administrative process(es) for which it claims the exemption and the role of the withheld records in that process.

67. Defendants also failed to disclose "any reasonable segregable portion" of the records, as required by the FOIA. 5 U.S.C. § 552 (b).

68. Defendants have failed to justify their use of FOIA exemptions to withhold records. Therefore, Defendants have violated FOIA's mandate by failing to provide adequate legal justification for specific withholdings. 5 U.S.C. §§ 552(a)(3), 552(d).

CLAIM THREE
(Legally Inadequate Index)

69. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

70. In its January 8, 2003 letter, the DOI stated that it was withholding a total of 352 pages of records because of claimed exemptions under the FOIA. The only description provided of withheld records consisted of a one-and-a-half-page list that grouped the withheld records into vague categories.

71. The DOI did not adequately describe each withheld record or deletion from a

released record or explain why the claimed exemption is relevant for each deletion or withheld record, as required by the FOIA. Vaughn v. Rosen, 484 F.2d 820, 827 (D.C. Cir. 1973).

72. Defendants have therefore violated the FOIA by failing to provide a Vaughn index, or an equivalent thereof, for their withholdings. 5 U.S.C. § 552(a)(3).

CLAIM FOUR
(Failure to Respond)

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

74. On February 4, 2003, Plaintiffs filed with the DOI an appeal of the DOI's January 8, 2003 adverse determination.

75. In its letter of March 3, 2003, DOI stated that Plaintiffs' appeal, "as it pertains to the withheld documents, is with the Office of the Solicitor for legal review" and that it could not presently respond for that portion of the appeal. The DOI did not "set[] forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched," as required by the FOIA. DOI has exceeded the statutory time limit for such a determination, even after allowing for an extension. 5 U.S.C. § 552(a)(6)(A)(ii), (a)(6)(B).

76. On March 11, 2003, Plaintiffs submitted a FOIA request to OGE requesting the same records that Plaintiffs had requested of DOI in Plaintiffs' September 25, 2003 request.

77. To date, Plaintiffs have not received a response from OGE to their March 11, 2003 FOIA request, and OGE has exceeded the 20-working-day statutory time limit for such a response. 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(B).

78. Therefore, DOI and OGE have violated the FOIA's mandate to respond to Plaintiffs' FOIA request and to Plaintiffs' objections to withholdings within the statutory time period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Declare that DOI has violated the Freedom of Information Act (FOIA) by failing to lawfully satisfy Plaintiffs' FOIA request of September 25, 2002;
- (2) Order DOI to respond to all aspects of Plaintiffs' FOIA requests and appeals;
- (3) Order DOI to immediately release all records responsive to Plaintiffs' FOIA request;
- (4) Declare that OGE has violated the Freedom of Information Act (FOIA) by failing to lawfully satisfy Plaintiffs' FOIA request of March 11, 2003;
- (5) Order OGE to respond to all aspects of Plaintiffs' FOIA requests and appeals;
- (6) Order OGE to immediately release all records responsive to Plaintiffs' FOIA request;
- (7) Order Defendants to provide a legally adequate index of all withheld records;
- (8) Make a written finding that the circumstances surrounding the withholding of the requested records raise questions whether agency personnel in the DOI acted arbitrarily and capriciously, pursuant to 5 U.S.C. § 552(a)(4)(F);
- (9) Award Plaintiffs their reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

(10) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "WJ Snape III", is written over a horizontal line.

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Endangered Species Coalition

Dated: June 3, 2003

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